Deboise Contractors Company, Inc. *and* Massachusetts Laborers' Benefit Funds. Case 1–CA–29236

August 31, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge filed by Massachusetts Laborers' Benefit Funds on March 26, 1992 (amended April 28, 1992), the General Counsel of the National Labor Relations Board issued a complaint on May 8, 1992, against Deboise Contractors Company, Inc., the Respondent, alleging that it has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 8(d) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On July 24, 1992, the General Counsel filed a Motion for Summary Judgment. On July 28, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, ''all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board.'' Further, the undisputed allegations in the Motion for Summary Judgment disclose that by letter dated June 2, 1992, the acting Regional attorney notified the Respondent that unless an answer was received by the close of business June 9, 1992, a Motion for Summary Judgment would be filed. To date, no answer has been filed by the Respondent.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Worcester, Massachusetts, has been engaged as a road and site contractor in the construction industry. During the calendar year ending December 31, 1991, a representative period, the Respondent, in the course and conduct of its business operations, provided services valued in excess of $50,000 for B & W Contractors, an enterprise located within the Commonwealth of Massachusetts which is directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that the Massachusetts Laborers' District Council of the Laborers' International Union of North America, AFL–CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On October 14, 1981, the Respondent executed an Acceptance of Agreement and Declaration of Trust with the Union in which it agreed to be bound to a collective-bargaining agreement between the Union and two employer associations, the Associated General Contractor of Massachusetts, Inc. and the Building Trades Employers' Association,[1] which was effective for the period June 1, 1981, through May 31, 1983, and to any successor agreements. On or about June 1, 1991, the Union and the associations entered into a collective-bargaining agreement which by its terms is effective for the period June 1, 1991, through May 31, 1994.

Since on or about October 14, 1981, and at all material times, the Union has been the limited exclusive collective-bargaining representative of all the Respondent's employees in an appropriate unit[2] and has, since then, been recognized as such by the Respondent, such recognition having been embodied in the above-mentioned Acceptance of Agreement and Declaration of Trust.[3] At all material times, the Union has been the

[1] The associations are composed of various employers engaged in the construction industry. One of the purposes of the associations is to represent its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the Union.

[2] The record does not contain a full description of the bargaining unit. Rather, the unit is described only as including all employees in the classifications set forth in the above-mentioned collective-bargaining agreement, excluding all other employees, guards, and supervisors as defined in the Act.

[3] The commerce data in the complaint suggests that the Respondent is a construction industry employer subject to the provisions of Sec. 8(f) of the Act. However, we are unable to determine from the complaint or from the documents submitted by the General Counsel in support of the motion whether the bargaining relationship between the Respondent and the Union was established pursuant to Sec. 8(f) or pursuant to the Union's showing of 9(a) majority support. Under *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), a union signatory to an 8(f) contract attains only limited 9(a) status confined to the terms of the contract. The burden of showing that a bargaining relationship between a union and a construction industry employer

limited exclusive collective-bargaining representative of the unit employees for the purposes of collective bargaining over rates of pay, wages, hours of employment, and other terms and conditions of employment, pursuant to Section 9(a) of the Act.

Since about November 20, 1991, the Respondent has failed to continue in effect all the terms and conditions of the 1991–1994 agreement by failing to remit dues to the Union pursuant to article VIII, and fringe benefit amounts to the Health and Welfare Fund, Pension Fund, Training Trust Fund, Legal Services Fund, and Annuity Fund, as required under articles XI–XV of the agreement, all of which are mandatory subjects of bargaining. By engaging in such conduct without the Union's consent, the Respondent has failed, and is failing, to bargain in good faith with the Union within the meaning of Section 8(d), and in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing to remit dues to the Union pursuant to article VIII of the 1991–1994 agreement, and failing to make fringe benefit payments to the Health and Welfare Fund, Pension Fund, Training Trust Fund, Legal Services Fund, and Annuity Fund, as required by articles XI–XV of the agreement, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), Section 8(d), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to comply with all terms of its 1991–1994 agreement with the Union, and to remit to the Union, with interest, all dues that have not been forwarded since about November 20, 1991, as required by article VIII of the 1991–1994 agreement, and to make the fringe benefit payments to the Health and Welfare Fund, Pension Fund, Training Trust Fund, Legal Services Fund, and Annuity Fund that have not been made since about the same date, as required by articles XI–XV of the agreement.[4] We shall also order the Respondent to make its employees whole for any losses attributable to its failure to make such fringe benefit payments, with interest. *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981).[5]

ORDER

The National Labor Relations Board orders that the Respondent, Deboise Contractors Company, Inc., Worcester, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to continue in effect all the terms and conditions of its 1991–1994 collective-bargaining agreement with Massachusetts Laborers' District Council of the Laborers' International Union of North America, AFL–CIO, which is the limited exclusive collective-bargaining representative of all the Respondent's employees in the classifications set forth in that agreement, excluding all other employees, guards, and supervisors as defined in the Act, by failing to remit dues to the Union and failing to make fringe benefit payments to the Health and Welfare Fund, Pension Fund, Training Trust Fund, Legal Services Fund, and Annuity Fund.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remit to the Union all dues that have not been forwarded since about November 20, 1991, as required by article VIII of the parties' 1991–1994 agreement, with interest as set forth in the remedy section of this decision.

(b) Remit the fringe benefit payments to the Health and Welfare Fund, the Pension Fund, the Training Trust Fund, the Legal Services Fund, and the Annuity Fund that have not been made since about November 20, 1991, as required under articles XI–XV of the parties' 1991–1994 agreement, and make its employees whole for any losses attributable to its failure to make such payments in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(d) Post at its facility in Worcester, Massachusetts, copies of the attached notice marked ''Appendix.''[6]

is not an 8(f) relationship is on the party asserting 9(a) status. *Deklewa*, supra at 1385 fn. 41. In the absence of an allegation that the bargaining relationship was based on a showing of 9(a) support, we find that the relationship was entered into pursuant to Sec. 8(f) and that the Union is, therefore, the limited Sec. 9 representative of the Respondent's employees for the period covered by the contract.

[4] All interest shall be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[5] Any additional amounts applicable to those payments shall be computed in the manner prescribed in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a

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Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to continue in effect all the terms and conditions of our 1991–1994 collective-bargaining agreement with Massachusetts Laborers' District Council of the Laborers' International Union of North America, AFL–CIO, which is the limited exclusive collective-bargaining representative of all our employees in the classifications set forth in that agreement, excluding all other employees, guards, and supervisors as defined in the Act, by failing to remit dues to the Union as required by article VIII of the agreement, and failing to make fringe benefit payments to the Heath and Welfare Fund, Pension Fund, Training Trust Fund, Legal Sevices Fund, and Annuity Fund as required by articles XI–XV of our agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remit to the Union the dues that have not been forwarded since about November 20, 1991, with interest.

WE WILL make the fringe benefit payments to the Health and Welfare Fund, Pension Fund, Training Trust Fund, Legal Services Fund, and Annuity Fund that have not been made since about November 20, 1991, and WE WILL make whole our employees for any losses attributable to our failure to make such payments, with interest.

DEBOISE CONTRACTORS COMPANY, INC.

Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''